

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 180

Introduced by Assembly Member Bass

January 24, 2007

~~An act to amend Section 35710.5 of the Education Code, relating to school districts. An act to amend Sections 2945.2, 2945.3, and 2945.4 of, and to add Section 2945.45 to, the Civil Code, relating to mortgages.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 180, as amended, Bass. ~~School districts; reorganizations. Mortgages; foreclosure consultants.~~

Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, except as specified. Existing law allows a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by the foreclosure consultant. Existing law requires that the contract be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. Existing law prohibits a foreclosure consultant from taking any power of attorney from an owner, except to inspect documents as provided by law.

This bill would instead allow a homeowner to cancel a contract with a foreclosure consultant at any time, and to do so by mail, e-mail, or facsimile. It would require that a contract with a foreclosure consultant be written in the language principally used by the homeowner if the homeowner's ability to understand or to express himself or herself in spoken or written English is inadequate. The bill would require that a

homeowner have at least 24 hours to review a proposed contract, and would prohibit a foreclosure consultant from taking any power of attorney from an owner for any purpose.

The bill would require a foreclosure consultant to register with the Department of Justice and to obtain and maintain a surety bond of \$25,000.

~~Existing law prescribes the procedure to reorganize school districts, including the filing of a petition with the county superintendent of schools by specified persons. Existing law authorizes a county committee on school district organization for certain petitions to transfer territory to approve the petition, as provided. Existing law authorizes an action by the county committee on school district organization approving or disapproving a petition to transfer territory to be appealed to the State Board of Education by the chief petitioners or one or more affected school districts. The state board, upon receipt of the appeal, may elect either to review the appeal or to ratify the county committee's decision by summarily denying review of the appeal.~~

~~This bill would require the state board to render its decision on the appeal within 60 days of the date of receipt of the appeal.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2945.2 of the Civil Code is amended to
2 read:

3 2945.2. (a) In addition to any other right under law to rescind
4 a contract, an owner has the right to cancel such a contract ~~until~~
5 ~~midnight of the third "business day" as defined in subdivision (e)~~
6 ~~of Section 1689.5 after the day on which the owner signs a contract~~
7 ~~which complies with Section 2945.3 at any time.~~

8 (b) Cancellation occurs when the owner gives written notice of
9 cancellation to the foreclosure consultant *by mail* at the address
10 specified in the contract, ~~or by facsimile or electronic mail at the~~
11 ~~number or address identified in the contract or other materials~~
12 ~~provided to the owner by the foreclosure consultant.~~

13 (c) Notice of cancellation, if given by mail, is effective when
14 deposited in the mail properly addressed with postage prepaid. *If*
15 ~~given by facsimile or electronic mail, notice of cancellation is~~
16 ~~effective when successfully transmitted.~~

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

SEC. 2. Section 2945.3 of the Civil Code is amended to read:

2945.3. (a) Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subdivision (c):

"NOTICE REQUIRED BY CALIFORNIA LAW

_____ or anyone working

(Name)

for him or her CANNOT:

(1) Take any money from you or ask you for money

until _____ has

(Name)

completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, deed of trust, or deed."

(c) The contract shall be written in the same language as principally used by the ~~foreclosure consultant to describe his or her services or~~ owner if the owner's ability to understand or to express himself or herself in spoken or written English is inadequate. The contract shall fully disclose the exact nature of the foreclosure consultant services, and the owner shall be provided with an opportunity to negotiate the contract; ~~-. The contract shall be dated and signed by the owner; and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: "You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."~~

(d) The owner shall have at least 24 hours from the time he or she receives the proposed contract from the foreclosure consultant to review the contract terms. The owner may consult an attorney, tax advisor, or other advisor prior to signing the contract.

(d)

(e) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name ~~and~~, mailing address, electronic mail address, and facsimile number of the foreclosure consultant to which the notice or cancellation is to be mailed.

(2) The date the owner signed the contract.

(e)

(f) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation," which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, ~~within three business days from the above date~~ at any time.

To cancel this transaction, mail or deliver, *by regular mail, e-mail, facsimile, or telegram*, a signed and dated copy of this cancellation notice, or any other written notice, ~~or send a telegram.~~

to _____

(Name of foreclosure consultant)

at _____

(Address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF _____.

(Date)

I hereby cancel this transaction

(Date)

”

(Owner's signature)

(f)
(g) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

~~(g) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.~~

(h) After the 65-day period following the foreclosure sale, the foreclosure consultant may enter into a contract to assist the owner in arranging, or arrange for the owner, the release of funds remaining after the foreclosure sale (“surplus funds”) from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee. However, prior to entering into that contract, the foreclosure consultant shall do all of the following:

(1) Prepare and deliver to the owner a notice in 14-point boldface type and substantially in the form set forth below.

(2) Obtain a receipt executed by each owner and acknowledged before a notary public, acknowledging a copy of the notice set forth below.

“NOTICE TO OWNER

(Date of Contract)

(Date signed by Owner)

(Date of Foreclosure Sale)

You may be entitled to receive all or a portion of the surplus funds generated from the foreclosure sale of your real property located at: _____, California
on _____ without paying any fees or costs of any kind to a third party. You should check directly with the trustee or beneficiary who conducted the foreclosure sale of your property to determine the name, address, and telephone number of the party to whom you can direct inquiries regarding filing a claim for surplus funds without paying a fee to a third party. No person or entity may require you to enter into any agreement requiring the payment of a fee to that person or entity in order to receive the surplus funds from the foreclosure sale to which you may be entitled during the 65 days after the date of the trustee's sale.”

1 *SEC. 3. Section 2945.4 of the Civil Code is amended to read:*

2 2945.4. It shall be a violation for a foreclosure consultant to:

3 (a) Claim, demand, charge, collect, or receive any compensation
4 until after the foreclosure consultant has fully performed each and
5 every service the foreclosure consultant contracted to perform or
6 represented that he or she would perform.

7 (b) Claim, demand, charge, collect, or receive any fee, interest,
8 or any other compensation for any reason which exceeds 10 percent
9 per annum of the amount of any loan which the foreclosure
10 consultant may make to the owner.

11 (c) Take any wage assignment, any lien of any type on real or
12 personal property, or other security to secure the payment of
13 compensation. That security shall be void and unenforceable.

14 (d) Receive any consideration from any third party in connection
15 with services rendered to an owner unless that consideration is
16 fully disclosed to the owner.

17 (e) Acquire any interest in a residence in foreclosure from an
18 owner with whom the foreclosure consultant has contracted. Any
19 interest acquired in violation of this subdivision shall be voidable,
20 provided that nothing herein shall affect or defeat the title of a
21 bona fide purchaser or encumbrancer for value and without notice
22 of a violation of this article. Knowledge that the property was
23 “residential real property in foreclosure,” does not constitute notice
24 of a violation of this article. This subdivision may not be deemed
25 to abrogate any duty of inquiry which exists as to rights or interests
26 of persons in possession of residential real property in foreclosure.

27 (f) Take any power of attorney from an owner for any purpose;
28 ~~except to inspect documents as provided by law.~~

29 (g) Induce or attempt to induce any owner to enter into a contract
30 which does not comply in all respects with Sections 2945.2 and
31 2945.3.

32 (h) Enter into an agreement to assist the owner in arranging, or
33 arrange for the owner, the release of surplus funds prior to 65 days
34 after the trustee’s sale is conducted, whether the agreement involves
35 direct payment, assignment, deed, power of attorney, or assignment
36 of claim from an owner to the foreclosure consultant or any person
37 designated by the foreclosure consultant.

38 *SEC. 4. Section 2945.45 is added to the Civil Code, to read:*

39 2945.45. *Except as provided in subdivision (b) of Section*
40 *2945.1, a person shall not take any action specified in subdivision*

1 (a) of Section 2945.1 unless the person satisfies the following
2 requirements:

3 (a) The person registers as a foreclosure consultant with the
4 Department of Justice.

5 (b) The person obtains and maintains in force a surety bond in
6 the amount of twenty-five thousand dollars (\$25,000).

7 ~~SECTION 1. Section 35710.5 of the Education Code is~~
8 ~~amended to read:~~

9 ~~35710.5. (a) An action by the county committee approving or~~
10 ~~disapproving a petition pursuant to Section 35709, 35710, or~~
11 ~~35710.1 may be appealed to the state board by the chief petitioners~~
12 ~~or one or more affected school districts. The appeal shall be limited~~
13 ~~to issues of noncompliance with the provisions of Section 35705,~~
14 ~~35706, 35709, or 35710. If an appeal is made as to the issue of~~
15 ~~whether the proposed transfer will adversely affect the racial or~~
16 ~~ethnic integration of the schools of the districts affected, it shall~~
17 ~~be made pursuant to Section 35711.~~

18 ~~(b) Within five days after the final action of the county~~
19 ~~committee, the appellant shall file with the county committee a~~
20 ~~notice of appeal and shall provide a copy to the county~~
21 ~~superintendent of schools, except that if the appellant is one of the~~
22 ~~affected school districts it shall have 30 days to file the notice of~~
23 ~~appeal with the county committee and provide a copy to the county~~
24 ~~superintendent. Upon the filing of the notice of appeal, the action~~
25 ~~of the county committee shall be stayed, pending the outcome of~~
26 ~~the appeal. Within 15 days after the filing of the notice of appeal,~~
27 ~~the appellant shall file with the county committee a statement of~~
28 ~~reasons and factual evidence. The county committee shall then,~~
29 ~~within 15 days of receipt of the statement, send to the state board~~
30 ~~the statement and the complete administrative record of the county~~
31 ~~committee proceedings, including minutes of the oral proceedings.~~

32 ~~(c) Upon receipt of the appeal, the state board may elect either~~
33 ~~to review the appeal, or to ratify the county committee's decision~~
34 ~~by summarily denying review of the appeal. The board may review~~
35 ~~the appeal either solely on the administrative record or in~~
36 ~~conjunction with a public hearing. Following the review, the board~~
37 ~~shall affirm or reverse the action of the county committee, and if~~
38 ~~the petition will be sent to election, shall determine the territory~~
39 ~~in which the election is to be held. The board may reverse or~~
40 ~~modify the action of the county committee in any manner consistent~~

1 ~~with law. The board shall render its decision on the appeal within~~
2 ~~60 days of the date of receipt of the appeal.~~
3 ~~(d) The decision of the state board shall be sent to the county~~
4 ~~committee which shall notify the county board of supervisors or~~
5 ~~the county superintendent of schools pursuant to Section 35709,~~
6 ~~35710, or 35710.1, as appropriate.~~

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